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SUPREME COURT OF THE UNITED STATES.

No. 4.

THOMAS A. SNOW AND OLIVER PALMER, MANAGERS OF THE OCEAN TOW-BOAT COMPANY, CLAIMANTS AND OWNERS OF THE STEAM TOW-BOAT "STAR," AND OLIVER PALMER, APPELLANTS,

vs.

CHARLES HILL AND AL., OWNERS OF THE SHIP "OCEAN QUEEN," AND GEORGE LAW, MARSHALL O. ROBERTS, AND BOWES R. McILVAINE, TRUSTEES OF THE U. S. MAIL STEAMSHIP COMPANY, CLAIMANTS AND OWNERS OF THE STEAMSHIP "CRESCENT CITY."

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

REPORT.

Damages to the "Ocean Queen."

The damages sustained by the "Ocean Queen" were assessed in the U. S. district court at $19,465 79. No additional claim has been made, nor has the correctness of the allowance been questioned.

Damages to the "Crescent City."

Immediately after the collision, in November, 1852, the "Crescent City" went into dock in this port for repairs. On a reference before the commissioner of the U. S. district court she claimed and proved up damages to the amount of $910 12. Her agent, Jas. K. Jennings, esq., in his testimony before that officer states: "I ordered that the damages done to the vessel should be repaired, and this is the bill rendered for the repairs accordingly made. * * * These repairs were made as soon as practicable after the arrival of the steamship, and made also under the direction of the port wardens of this city." After completing her repairs she made her voyage to New York, and whilst being there, freighted with a return cargo, it was discovered that she was leaking badly, and she was for the second time placed in dock for repairs. This occurred in the latter part of November, 1852, a year

and four months before the reference to the commissioner of the district court; yet no other damage was attempted to be proven before that officer than the last of her repairs and demurrage in New Orleans. After the reference made to the undersigned in June, 1855, a commission was issued to take the deposition of certain witnesses in New York on the subject of the cost of the steamer's repairs and her demurrage in that city. Under that commission two witnesses were examined. The ship carpenter by whom she was repaired, in describing her condition when taken into dock, says: "The necessity of the work appeared from her loss of cut-water, bowsprit, and grip; she was leaky; her stem was started, and the copper torn off, and oakum started at the seams." I cannot presume that the port wardens of this city, by whom she was surveyed, and under whose direction the first repairs were made, with the liberal instructions given by her agent, "that the damages done to the vessel should be repaired," could have suffered her to leave this port in the very unseaworthy condition here described. A proper regard to their characters, to those of her agents and officers, negatives such a presumption. "Yet the steamer must have suffered from collision, for the sea could not have damaged her as she was," * * * "and the repairs were strictly necessary for rendering the vessel seaworthy, from injuries apparent in consequence of some collision."

Deposition of New York Ship Carpenter.

There is no evidence in the record to connect these injuries with the collision in question, and to reconcile the facts proved with those which we are bound to presume. I am forced to conclude that the steamer suffered from some accident after leaving the dock in New Orleans. I allow her the amount of damages claimed and proved before the commissioner of the district court.

Damages to Tow-boat "Star."

The owners of this boat have presented the following claims:

1st.	Bill of Robinson, Poviniger & Martin, ship carpenters, for repairs in 1852 -	$698 00	$698 00
2d.	Wages of crew for 12 days whilst in dock	304 00	304 00
3d.	Provisions for crew for the same time -	98 56	98 56
4th.	Am't paid for spike nails - - -	18 50	18 50
5th.	Am't paid for repairs in Sept. 1855 -	430 00	
6th.	Loss of probable profits consequent upon her withdrawal from active service -	898 57	
	Am't claimed - - - - -	$2,447 63	
	Am't allowed - - - - - - -		$1,119 06

I have disallowed the 5th item, as the repairs were not made until nearly three years after the collision, and some three months after the date of the decree and order of reference.

I have also disallowed the 6th item, as the profits depended upon the contingency of her continuing to run, and the evidence upon the subject is uncertain.

Under the decree of the court to apportion the entire damage between the United States Mail Steamship Company and the Ocean Tow-boat Company, the case will stand thus:

Damage to ship Ocean Queen - - - - -		$19,465 79
Amount to be contributed by each company - -		9,732 89
Damages to "Crescent City" - -	$910 12	
Damages to "Star" - - - -	1,119 06	
	2) $2,029 18	
Amount to be borne by each Co. - -	$1,014 59	
Of this "Crescent City" has paid (in repairs) - - - - - - - -	910 12	
And she consequently owes to the "Star"	$104 47	

RECAPITULATION.

Amount due by owners of "Star" to "Ocean Queen"	$9,732 89½
Amount due by "Crescent City" to "Ocean Queen"	9,732 89½
Total due to "Ocean Queen" - - -	$19,465 79
Amount due by "Crescent City" to owners of "Star"	104 47

Respectfully submitted:
J. W. GURLEY, *Com'r.*

We are satisfied with the above report, and make no objection to being made the basis of the final decree to be rendered by Judge Campbell.

N. O., 7th November, 1857.

J. P. BENJAMIN,
For Tow-boat Star.
WILLIAM H. HUNT,
For the Crescent City.
HUNTON & BRADFORD,
For Libellants.

Circuit Court of the United States, fifth circuit and eastern district of Louisiana.

NEW ORLEANS, *Saturday, 21st Nov.* 1857.

Court met pursuant to adjournment: Present Hon. Theo. H. McCaleb, district judge; Absent J. A. Campbell, presiding judge.

The following decree was this day received from Hon. J. A. Campbell, presiding judge, and was ordered to be recorded, viz:

CHARLES HILL and als., Owners of the Ocean Queen,
vs.
STEAMSHIP CRESCENT CITY AND STEAM TOW-BOAT "STAR."

UNITED STATES MAIL STEAMSHIP COMPANY
vs.
OCEAN TOW-BOAT CO. AND OCEAN QUEEN.

OCEAN TOW-BOAT COMPANY
vs.
UNITED STATES MAIL STEAMSHIP COMPANY.

The parties to these suits, by their respective proctors, have filed their written consent to the entry of a decree confirming the report of the commissioner heretofore appointed to state the entire damage arising from the collision described in the pleadings, and to apportion it between the corporation defendants according to the admiralty rule of apportionment, when there has been mutual fault; and the court now here, proceeding to render a final decree, doth order and adjudge, that Charles Hill, Moses Davenport, Henry Sharf, and John Osgood, owners of the ship Ocean Queen, recover of Thomas A. Snow and Oliver Palmes, managers of the Ocean Tow-boat Company of New Orleans, and Oliver Palmes, their surety upon the stipulation, in solido, for the sum of nineteen thousand four hundred and sixty-five dollars and seventy-nine cents damages, with interest thereon at the rate of five per cent. per annum, from the 10th day of January, 1853, until paid, and costs of suit.

And the court doth further order and adjudge, that the said Ocean Tow-boat Company, upon the payment of the sum above specified, shall have and recover from the United States Mail Steamship Company, and Arnold Harris and Frederick Fisher, their sureties in the stipulation bound in solido, nine thousand seven hundred and thirty-two dollars and eighty-nine cents, the one-half of the amount of the damages sustained by the said ship Ocean Queen, together with interest thereon at the rate of five per cent. per annum, from the 10th day of January, 1853, until paid, and one-half of the costs of the suit.

It is further ordered and decreed, that if for any cause the said Tow-boat Company and its sureties shall not respond to the decree in favor of the said Charles Hill, Moses Davenport, Henry Sharf and John Osgood, that the said sum of nine thousand seven hundred and thirty-two dollars and eighty-nine cents, with the interest and costs above specified, shall be collected in the name of the said Tow-boat Company for the use of the said Hill and others, owners of the said Ocean Queen, and libellants in this court.

It is further ordered and adjudged, that the said Ocean Tow-boat Company have and recover from the United States Mail Steamship Company and their sureties aforesaid, the sum of one hundred and

four dollars and forty-seven cents, half the excess of damage sustained by the "Star" in the collision specified in the pleadings, with interest at the rate of five per cent. per annum, from the 10th of January, 1853, until paid.

It is further ordered and decreed, that the costs of the three suits specified in the caption of this order be paid by the said Ocean Tow-boat Company and the United States Mail Steamship Company, in equal portions.

J. A. CAMPBELL,
Associate Justice of the Supreme Court of the U. S.

CLERK'S OFFICE.

I certify the foregoing to be true and correct copies of the original report and decree, from the originals of record and on file.

[L. S.] Attest: J. W. GURLEY, *Clerk.*

New Orleans, 21st November, 1857.

Filed 4th December, 1857.